

Exhibit 5

Excerpts from the deposition of Harri Kytomaa

September 4, 2009

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF WISCONSIN
3 GREEN BAY DIVISION

4 APPLETON PAPERS INC. and
5 NCR CORPORATION,

6 Plaintiffs,

7 vs. Case No. 08-CV-16-WCG

8 GEORGE A. WHITING PAPER COMPANY, ET AL.,

9 Defendants.

10 NCR CORPORATION,

11 Plaintiff,

12 vs. Case No. 08-CV-0895-WCG

13 KIMBERLY-CLARK CORPORATION, ET AL.,

14 Defendants.

15 Deposition of HARRI KYTOMMA, Ph.D., P.E.
16 Friday, September 4th, 2009

17 9:06 a.m.

18 at

19 McDermott, Will & Emery
20 28 State Street
21 Boston, Massachusetts

22
23
24 Reported by Constance L. Bauer, RPR/RMR/CRR

25

1 able to compute it, knowing full well that I can
2 easily compute it if I take the time to do that and
3 go through the proper records and so forth.

4 BY MR. MANDELBAUM:

5 Q Okay. I understand that. I also asked you an
6 arithmetic question instead, which was, if the total
7 amount received was on the order of tens of millions
8 of pounds, your opinion is that the discharge to the
9 sewer was on the order of hundreds of thousands of
10 pounds?

11 MR. HA: Object to form.

12 THE WITNESS: Could you state that again,
13 please?

14 (Pending question was read back.)

15 THE WITNESS: Okay. So -- so taking the
16 hypothetical that I don't really have an answer to,
17 that is, that it was tens of millions, which is
18 something that I would be able to, if asked, compute
19 independently, then the number 1.4 percent, which I
20 believe is an overestimation of what was actually
21 released, corresponds to 140,000, okay. So I believe
22 it was less.

23 So in answer to your question, I think
24 that, no, that is not what I believe. I believe it
25 was less.

1 BY MR. MANDELBAUM:

2 Q What is your opinion as to the rate of loss
3 throughout the -- on average for the period 1954 to
4 1971?

5 A I believe it was less than 1.4 percent.

6 Q How much less?

7 A So, I haven't actually computed exactly how much
8 less, but what I have done is I've performed an
9 analysis, which Klass hasn't done, that the
10 assumptions that are made in the RMT report, which
11 actually computes and arrives at an estimation,
12 expected release fraction of 1.4 percent, are overly
13 conservative on multiple -- multiple fronts.

14 And so I would expect that to be -- I mean,
15 I don't have a specific number, but it could be half
16 of that, it could be -- it could be 1 percent, it
17 could be half a percent, something of that order.

18 Q So if the total mass of PCBs received at that
19 facility was 30,000,000 pounds and it was a half a
20 percent, the order of magnitude of the discharge to
21 the sewer would be hundreds of million -- hundreds of
22 thousands of pounds of PCBs, correct?

23 A Okay. So if --

24 Q Are we going to joust about arithmetic, Dr. Kytomma?
25 I mean, come on.

1 A Well, you ask the questions, I answer them --
2 Q All right.
3 A -- so you're calling the shots here, sir. 30- -- so
4 if you -- if the amount that was delivered was
5 30,000,000 pounds, okay, 1 percent would correspond
6 to 300,000, and half a percent would correspond to
7 150,000 pounds by simple arithmetic.

8 Q Okay. And so your opinion is -- on the assumption
9 that the total amount of PCB received at this
10 facility was 30,000,000 pounds during the period 1954
11 to 1971, your opinion is that it could be -- that the
12 discharge to the sewer could be as low as 150,000
13 pounds, and so it's on the order of hundreds of
14 thousand of pounds, and Mr. Klass's opinion is that
15 it's on the order of hundreds of thousands of pounds,
16 correct?

17 MR. HA: Object to form.

18 THE WITNESS: Well, first of all, I
19 haven't -- to be able to answer that question, I
20 would have to actually look at the hypothetical that
21 you're presenting to me, which I haven't done.

22 So the -- you know, what I am willing to
23 say is that it could be as -- it could be as low as
24 half a percent of the amount of emulsion that was
25 shipped to the Appleton plant. Exactly what that

1 tank was disconnected. So essentially what would
2 have been left would not have had the high
3 concentration of the emulsion that was in the tanker
4 at -- you know, during the delivery.

5 And 40 gallons strikes me as a very large
6 volume associated with these kinds of operations of,
7 say, handling of costly emulsions. If this was
8 indeed the case, they could have easily captured with
9 a pan and kept them.

10 So I don't -- I think that's an
11 overestimation.

12 Q It's an overestimation for the entire period?

13 A Yes. I also think that -- I mean, there are a number
14 of others, but I also think that the -- that one
15 entire truck, 4,000 gallons, was lost during the
16 18-year period. There was an entire weigh tank lost
17 in the 18-year period.

18 The volume associated with wash-ups
19 included the entire reservoir, as well as piping up
20 to the feed tank, and so let me just point you to
21 that -- to that one.

22 You can see that for Machines 7, 8, 9 and
23 10, they have 4.3 wash-ups per month, but if you look
24 at the distributions that they used -- and so what
25 that means is that it's just a little bit more than

1 weekly. But if you look at the distribution that
2 they have, actually, the expected value is 8.6, not
3 4.3.

4 So they're saying that twice a week every
5 machine has a wash-up that disposes the reservoir, as
6 well as all of the piping up to the feed tank. Now,
7 that -- that's just not how they were operating and
8 it is a conservative overestimation.

9 The calculation of the air loss in this
10 report associated with the airknife of .035 pounds
11 per minute I believe is also an overestimation. And,
12 in fact, the report itself says it -- it performs a
13 calculation and says that, you know, a fraction that
14 is lower than Line 19 on Page 7-3 is what they
15 calculate, but they use a larger number on Line 19.
16 So they tend to err on the higher side in most of
17 these entries.

18 Q Okay. And so based on that, you would say that --
19 well, we'll move on. Withdrawn. Have you ever
20 before rendered an opinion -- back up.

21 Your opinion here is that 2 percent is
22 certainly wrong, 1.4 percent is an upper bound, .5
23 percent is perhaps right.

24 MR. HA: Object to form.

25

1 BY MR. MANDELBAUM:

2 Q Is that right?

3 A Can you point me to where in the report you're
4 referring to?

5 Q No, that's what you said earlier today.

6 A Okay. Okay. Yeah, right. So my -- my opinion here
7 is that the 1.4 percent is an overestimation. I gave
8 you numbers that might be right. I can't give you a
9 number today, and I haven't certainly given you a
10 number in the report, as to what I believe is the --
11 my representation of the expected value. So, you
12 know, the equivalent of the 1.4 in the RMT report, I
13 don't have that. I just think that 1.4 is high --

14 Q Okay.

15 A -- okay.

16 Q Now I want to revisit a little bit the decision to
17 focus on the end of the period and to treat the 1950s
18 as less important.

19 Quantitatively, do you have an opinion as
20 to what proportion of the total the 1950s represent?

21 MR. HA: Object to form.

22 THE WITNESS: Well, I haven't calculated
23 it, but what I would do is add up the, you know, the
24 purchases associated with emulsion for the 1950s and
25 look at how those compared to the total.

1 BY MR. MANDELBAUM:

2 Q Well, if you look at Exhibit 1027-B --

3 A Yeah.

4 Q -- if the total production of emulsion is on the
5 order of 100,000 pounds --

6 A Yeah. Say again?

7 Q The total production of emulsion is on the order of
8 100,000 pounds.

9 A Yeah.

10 Q -- that would suggest that years in the 1950s after
11 19- -- you know, 1954, 1955 are quite low, but after
12 that they are -- they are in excess of 1 percent of
13 the total; is that right?

14 A Yeah. The '50s is more than 1 percent of the total,
15 yes.

16 Q And each individual year is more than 1 percent of
17 the total, right?

18 A Well, '54 and '55 aren't, but '56, '57, '58 and '59
19 are.

20 Q Okay. Is it your opinion that at that level, for
21 purposes of this case, those amounts can be ignored
22 or that period can be ignored?

23 MR. HA: Object to form.

24 THE WITNESS: I don't think it can be
25 ignored. I think that it has to be looked at in the

1 STATE OF _____)

2) SS

3 _____ COUNTY)

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5 I, HARRI KYTOMMA, Ph.D., P.E., do hereby certify

6 that I have read the foregoing transcript of proceedings,

7 taken on the 4th day of September, 2009, at McDermott,

8 Will & Emery, 28 State Street, Boston, Massachusetts, and

9 the same is true and correct except for the list of

10 corrections, if any, noted on the annexed errata sheet.

11

12 Dated at _____, _____, this ____

13 day of _____, 2009.

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HARRI KYTOMMA, Ph.D., P.E.

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